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ACTION AT LAW.

The water works company contracted with the municipal corporation of Raton to construct and maintain water works for it, and the corporation contracted to pay an agreed rental for the use of hydrants for twenty-five years. The works were constructed, and the corporation issued to the company, in pursuance of ordinances, warrants for such payments falling due one in every six months. Subsequently the corporation repealed the ordinances authorizing payment of the warrants, and passed other ordinances in conflict with them, whereupon the corporation refused to pay the warrants which had accrued and others as they became due. Thereupon the company filed this bill to enforce the payments of the amounts of rental already accrued, and as it should become due thereafter. *Held*, That the remedy of the company upon the warrants was at law, and not in equity, and that the court below should have dismissed the bill, without prejudice to the right of the company to bring an action at law. *Raton Water Works Co.* v. *Raton*, 360.

ADMIRALTY.

See BLOCKADE.

ATTORNEY AT LAW.

1. *Stone* v. *Bank of Commerce*, 174 U. S. 412, affirmed and applied to the point that the agreement of the commissioners of the sinking fund of Louisville and the attorney of the city with certain banks, trust companies, etc., including the Bank of Louisville, that the rights of those institutions should abide the result of test suits to be brought, was *dehors* the power of the commissioners of the sinking fund and the city attorney, and that the decree in the test suit in question did not constitute *res judicata* as to those not actually parties to the record. *Louisville* v. *Bank of Louisville*, 439.
2. *Citizens' Savings Bank of Owensboro* v. *Owensboro*, 173 U. S. 636, also affirmed and applied. *Ib.*
3. When a defendant, who has been duly served with process, causes an appearance to be entered on his behalf by a qualified attorney, and the

attorney subsequently withdraws his appearance, but without first obtaining leave of court, the record is left in a condition in which a judgment by default for want of an appearance can be validly entered. *Rio Grande Irrigation and Colonization Co.* v. *Gildersleeve*, 603.

See TAX AND TAXATION, 3, 4.

BANKRUPTCY.

As a deed of general assignment for the benefit of creditors is made by the bankruptcy act alone sufficient to justify an adjudication in involuntary bankruptcy against the debtor making such deed, without reference to his solvency at the time of the filing of the petition, the denial of insolvency by way of defence to a petition based upon the making of a deed of general assignment is not warranted by the bankruptcy law. *West Company* v. *Lea*, 590.

BLOCKADE.

1. A blockade to be binding must be known to exist. *The Olinde Rodrigues*, 510.
2. There is no rule of law determining that the presence of a particular force is necessary in order to render a blockade effective, but, on the contrary, the test is whether it is practically effective, and that is a mixed question, more of fact than of law. *Ib.*
3. While it is not practicable to define what degree of danger shall constitute a test of the efficiency of a blockade, it is enough if the danger is real and apparent. *Ib.*
4. An effective blockade is one which makes it dangerous for vessels to attempt to enter the blockaded port; and the question of effectiveness is not controlled by the number of the blockading forces, but one modern cruiser is enough as matter of law, if it is sufficient in fact for the purpose, and renders it dangerous for other craft to enter the port. *Ib.*
5. The blockade in this case was practically effective, and until it should be raised by an actual driving away by the enemy, it was not open to a neutral trader to ask whether, as against a possible superiority of the enemy's fleet, it was or was not effective in a military sense. *Ib.*
6. After the captors had put in their proofs, the claimant, without introducing anything further, moved for the discharge and restitution of the steamship, on the ground of the ineffective character of the blockade and because the evidence did not justify a decree of condemnation; and in addition claimed the right to adduce further proofs, if its motion should be denied. *Held*, that the settled practice of prize courts forbids the taking of further proof under such circumstances. *Ib.*
7. The entire record in this case being considered, the court is of opinion that restitution of the Olinde Rodrigues should be awarded, without damages, and that payment of the costs and expenses incident to her

custody and preservation, and of all costs in the cause, except the fees of counsel, should be imposed upon the ship. *Ib.*

CAPTURES DURING THE WAR OF THE REBELLION.

1. Whether the capture of a steamboat on the western waters within the line of the Confederate forces, in February, 1862, by part of the naval forces of the United States on those waters, commanded by officers of the Navy, and under the general control of the War Department, but no land forces being near the scene of the capture or taking any active part therein, was a capture by the army — *quære*. *Oakes* v. *United States*, 778.
2. A libel for the condemnation, under the act of August 6, 1861, c. 60, of a steamboat captured and taken into firm possession by naval forces of the United States on the western waters during the War of the Rebellion, was filed by the District Attorney in the District Court of the United States for a district into which she had been brought; the libel alleged that she had been seized by a quartermaster for the reason that she was used with her owners' knowledge and consent in aiding the rebellion, contrary to that act; she was taken into the custody of the marshal under a writ of attachment from the court; notice was published to all persons to appear and show cause against her condemnation, and no one appeared or interposed a claim. *It seems* that a decree thereupon rendered for her condemnation and sale was valid against her former owners and all other persons. *Ib.*
3. The act of March 3, 1800, c. 14, § 1, providing that vessels or goods of a person resident within or under the protection of the United States taken by an enemy and recaptured by a vessel of the United States shall be restored to the owner on payment of a certain sum as salvage, has no application to property captured by the United States which had come into the enemy's possession by purchase or otherwise with the consent of the owner or of his agent, and not by capture or by other forcible and compulsory appropriation. *Ib.*
4. Communications between high civil and military officers of the so-called Confederate States, preserved in the Confederate Archives Office, War Department of the United States, or duly certified copies thereof from that office, are competent evidence upon the question whether possession of a steamboat belonging to a citizen of the United States was obtained by the Confederate States by capture or by purchase. *Ib.*
5. A petition under the act of July 28, 1892, c. 313, for compensation for an interest in a steamboat, which alleges that she was captured by the insurgents and recaptured by the United States during the War of the Rebellion, is not sustained by evidence that she was captured by the United States from the Confederate forces after they had obtained possession of her by purchase. *Ib.*

CASES AFFIRMED OR FOLLOWED.

1. The decree below, so far as it granted the relief prayed as against the defendants other than the city of Georgetown and the county of Scott, is affirmed by a divided court; and, so far as it adjudicated against the complainant and in favor of the defendants the city of Georgetown and the county of Scott, those defendants not having been parties or privies to the judgments pleaded as *res judicata*, is affirmed upon the authority of the decision in *Citizens' Savings Bank of Owensboro* v. *Owensboro*, 173 U. S. 636. *Stone* v. *Farmers' Bank of Kentucky*, 409.
2. On the authority of *Citizens' Savings Bank of Owensboro* v. *Owensboro*, 173 U. S. 636, and *Stone* v. *Bank of Commerce*, *ante*, 412, the decrees below are affirmed. *Fidelity Trust and Safety Vault Co.* v. *Louisville*, 429.
3. *Third National Bank of Louisville* v. *Stone, Auditor*, *ante*, 432, and *Louisville* v. *Third National Bank*, *ante*, 435, followed. *Louisville* v. *Citizens' National Bank*, 436.

See ATTORNEY AT LAW, 1, 2; MUNICIPAL BONDS;
JURISDICTION, A, 3; TAX AND TAXATION, 2, 8.

CASES DISTINGUISHED.

See CONTRACT, 2.

CONSTITUTIONAL LAW.

A. CONSTITUTION OF THE UNITED STATES.

1. The provision in § 2 of c. 155 of the acts of Kansas of 1885, entitled "An act relating to the liability of railroads for damages by fire," that, "in all actions commenced under this act, if the plaintiff shall recover, there shall be allowed him by the court a reasonable attorney's fee, which shall become a part of the judgment," must, for reasons stated in the opinion of the court, be sustained as legislation authorized by the Constitution of the United States. *Atchison, Topeka & Santa Fé Railroad Co.* v. *Matthews*, 96.
2. Section 944 of the Revised Statutes of Missouri of 1889, provided that, "Whenever any property is received by a common carrier to be transferred from one place to another, within or without this State, or when a railroad or other transportation company issues receipts or bills of lading in this State, the common carrier, railroad or transportation company issuing such bill of lading shall be liable for any loss, damage or injury to such property, caused by its negligence or the negligence of any other common carrier, railroad or transportation company to which such property may be delivered, or over whose line such property may pass; and the common carrier, railroad or trans-

portation company issuing any such receipt or bill of lading shall be entitled to recover, in a proper action, the amount of any loss, damage or injury it may be required to pay to the owner of such property, from the common carrier, railroad or transportation company, through whose negligence the loss, damage or injury may be sustained." In commenting on this statute the Supreme Court of Missouri said: "The provision of the statute is that 'wherever property is received by a common carrier to be transferred from one place to another.' This language does not restrict, but rather recognizes the right of the carrier to limit its contract of carriage to the end of its own route, and there deliver the property to the connecting carrier. There can be no doubt, then, that under the statute, as well as under the English law, the carrier can, by contract, limit its duty and obligation to carriage over its own route." *Held*, That the statute as thus interpreted could not be held to be repugnant to the Constitution of the United States. *Missouri, Kansas, and Texas Railway* v. *McCann*, 580.

3. Sturm sued the railway company in a justices' court in Kansas for wages due, and recovered for the full amount claimed. The company appealed to the county district court. When the case was called there for trial, the company moved for a continuance on the ground that a creditor of Sturm had sued him in a court in Iowa, of which State the railway company was also a corporation, and had garnisheed the company there for the wages sought to be recovered in this suit, and had recovered a judgment there from which an appeal had been taken which was still pending. The motion for continuance was denied, the case proceeded to trial, and judgment was rendered for Sturm for the amount sued for, with costs. A new trial was moved for, on the ground, among others, that the decision was contrary to and in conflict with section 1, article IV of the Constitution of the United States. The motion was denied, and the judgment was sustained by the Court of Appeals and by the Supreme Court of the State. The case was then brought here. *Held*, that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had in Iowa, and were consequently entitled to in Kansas, and the judgment must be reversed. *Chicago, Rock Island and Pacific Railway Co.* v. *Sturm*, 710.

CONTRACT.

1. The city of Portland, in Oregon, proposing to receive bids for the construction of what was called the Bull Run pipe line, Hoffman of Portland and McMullen of San Francisco entered into a contract in writing as follows: "This agreement, made and entered into by and between Lee Hoffman, of Portland, Oregon, doing business under the name of Hoffman & Bates, party of the first part, and John McMullen, of San Francisco, California, party of the second part, witnesseth:

That, whereas, said Hoffman and Bates have with the assistance of said McMullen at a recent bidding on the work of manufacturing and laying steel pipe from Mount Tabor to the head works of the Bull Run water system for Portland, submitted the lowest bid for said work, and expect to enter into a contract with the water committee of the city of Portland for doing such work, the contract having been awarded to said Hoffman and Bates on said bid: It is now hereby agreed that said Hoffman and said McMullen shall and will share in said contract equally, each to furnish and pay one half of the expenses of executing the same, and each to receive one half of the profits or bear and pay one half of the losses which shall result therefrom. And it is further hereby agreed that if either of the parties hereto shall get a contract for doing or to do any other part of the work let or to be let by said committee for bringing Bull Run water to Portland, the profits and losses thereof shall in the same manner be shared and borne by said parties equally, share and share alike." Both put in bids for the work which forms the subject of dispute in this case. Hoffman's bid was for $465,722. McMullen's was $514,664. There were several other bids, but Hoffman's was the lowest of all. The contract was awarded to him. He did the work and received the pay. This action was brought by McMullen to recover his portion of the profit, according to the contract. *Held*, that this contract was illegal, not only as tending to lessen competition, but also because the parties had committed a fraud in combining their interests and concealing the same, and in submitting the different bids as if they were *bona fide*, and that the court will not lend its assistance in any way towards carrying out the terms of an illegal contract, nor will it enforce any alleged rights directly springing from such a contract. *McMullen* v. *Hoffman*, 639.

2. While distinguishing *Brooks* v. *Martin*, 2 Wall. 70, from this case, the court holds that, taking that case into due consideration, it will not extend its authority at all beyond the facts therein stated. *Ib.*

See TAX AND TAXATION, 2.

CONTRIBUTORY NEGLIGENCE.

A highway in the State of Washington crossed the Northern Pacific Railroad at about right angles. It approached the railroad through a deep descending cut, and the track was not visible to one driving down until he had reached a point about forty feet from it. Freeman was driving a pair of horses in a farm wagon down this descent. When he emerged from the cut and reached the point from which an approaching train was visible, he was looking ahead at his horses. A train was coming up. The conductor, the engineer, and the fireman testified that the whistle was blown. Three witnesses, who were not in the employ of the railroad, and who were in a position to have

heard a whistle if it had been blown, testified that they did not hear it. When Freeman became conscious of the approaching train, he tried to avoid it; but it was too late, and he was struck by the train and was killed. So far as there was any oral testimony on the subject, it tended to show that Freeman neither stopped, looked, nor listened before attempting to cross the track. *Held*, That the testimony tending to show contributory negligence on the part of Freeman was conclusive, and that nothing remained for the jury, and that the company was entitled to an instruction to return a verdict in its favor. *Northern Pacific Railroad Co.* v. *Freeman*, 379.

COPYRIGHT.

The serial publication of a book in a monthly magazine, prior to any steps taken toward securing a copyright, is such a publication of the same within the meaning of the act of February 3, 1831, c. 16, as to vitiate a copyright of the whole book, obtained subsequently, but prior to the publication of the book as an entirety. *Holmes* v. *Hurst*, 82.

COURT AND JURY.

1. In this case the trial court at the close of the testimony, which is detailed in the opinion of this court, instructed a verdict in plaintiff's favor, which was affirmed by the Court of Appeals. This court affirms the judgment of the Court of Appeals. *Israel* v. *Gale*, 391.
2. Spurr was tried in the Circuit Court of the United States for the Middle District of Tennessee on three indictments, consolidated together, each of which charged him with having wilfully violated the provisions of Rev. Stat. § 5208, by wilfully, unlawfully and knowingly certifying certain cheques drawn on said bank by Dobbins and Dazey, well knowing that Dobbins and Dazey did not have on deposit with the bank at the times when the cheques were certified, respectively, an amount of money equal to the respective amounts specified therein. It was not denied that the defendant certified the cheques, and that the account of Dobbins and Dazey was overdrawn when the certifications took place. The questions for determination were defendant's knowledge of the state of Dobbins and Dazey's account when the cheques were certified and his intent in the certifications. After the case had been committed to the jury, and they had had it under consideration for some hours, they returned to the court room, and asked the following question, which was written out: "We want the law as to the certification of cheques, when no money appeared to the credit of the drawer." The court read to the jury the first half of Rev. Stat. § 5208, as follows: "It shall be unlawful for any officer, clerk or agent of any national banking association to certify any cheque drawn upon the association unless the person or company drawing the cheque has on deposit with the association, at the time

such cheque is certified, an amount of money equal to the amount specified in such cheque." The court then inquired: "Does this answer your question?" To which the foreman replied: "Yes, sir." The court again read that part of the section, and made certain observations; among others that a false certification was "the certifying by an officer of the bank that a cheque is good when there are no funds to meet it." As the jury were retiring, counsel for defendant said to the court that he thought what the jury wanted was the act of 1882 which the court had read to them, and that the court ought to read and explain that act to the jury. That act provided that an officer, clerk or agent of a national bank wilfully violating the provisions of Rev. Stat. § 5208, etc., "should be deemed guilty of a misdemeanor, and should, on conviction," "be fined," etc. The court, after asking if the counsel referred to the act prescribing penalty for false certification, and receiving an answer in the affirmative, said that the jury had nothing to do with that. *Held*, that the Circuit Court clearly erred in declining the request of counsel in respect of the act of 1882. *Spurr* v. *United States*, 728.

See EJECTMENT, 1, 4, 5.

CRIMINAL LAW.

1. On the trial of a person charged with feloniously receiving and having in his possession, with intent to convert them to his own use, postage stamps which had been feloniously stolen, taken and carried away from a postoffice by three persons named, although the person so receiving them well knew that the same had been so feloniously taken, stolen and carried away, the judgment convicting the said three persons of stealing the said stamps was received in evidence against the accused, under the provision in the act of March 3, 1875, c. 144, § 2, that such judgment "shall be conclusive evidence against said receiver, that the property of the United States therein described has been embezzled, stolen or purloined." The accused having been convicted, and the case brought here by writ of error, *Held*, That that provision of the statute violates the clause of the Constitution of the United States, declaring that in all criminal prosecutions the accused shall be confronted with the witnesses against him; and that the judgment must be reversed. *Kirby* v. *United States*, 47.
2. The contention by the defendant that the indictment is defective in that it does not allege ownership by the United States of the stolen articles of property at the time that they were alleged to have been feloniously received by him, is without merit. *Ib.*
3. The objection that the indictment does not show from whom the accused received the stamps, nor state that the name of such person was unknown to the grand jurors, is not well taken. *Ib.*

See COURT AND JURY.

CUSTOMS DUTIES.

Sawed boards and plank, planed on one side and grooved, or tongued and grooved, should be classified under the tariff act of August 28, 1894, 28 Stat. 508, as dressed lumber, and admitted free of duty. *United States* v. *Dudley*, 670.

EJECTMENT.

1. In this action of ejectment, the evidence of adverse possession contained in the bill of exceptions, and set forth in the opinion of this court, is sufficient to justify the action of the trial court in submitting the question to the jury. *Davis* v. *Coblens*, 719.
2. By the terms of the statute in force in the District of Columbia, the time of limitation of this action commenced to run against Lucy T. Davis, one of the plaintiffs in error, on the death of her mother, and as her mother's death took place more than ten years after the cause of action accrued, the term against the plaintiff in error expired in ten years after it accrued, and no disability on her part arrested its running. *Ib.*
3. It is the general practice to permit tenants in common to sue jointly or separately in ejectment; but if they sue jointly it is with the risk of the failure of all, if one of them fail to make out a title or right to possession. *Ib.*
4. When a cross-examination is directed to matters not inquired about in the principal examination, its course and extent are very largely subject to the control of the court in the exercise of a sound discretion, and the exercise of that discretion is not reviewable on a writ of error. *Ib.*
5. The plaintiff requested the following instruction: "The jury are instructed that there is no testimony in this case tending to rebut the testimony of the witness John H. Walter that he never conveyed lot 10, in controversy in this case, to any person other than the conveyance by the deed to plaintiffs Charles M. N. Latimer, Lucy T. Davis *and others, and the jury would not be justified in finding to the contrary.*" The court struck out the words in italics, and inserted instead, "and the weight to be given his testimony is a proper question for the jury." *Held*, that this was not error. *Ib.*

EQUITY.

A court of equity has jurisdiction of a bill by a corporation praying that its guaranty on a great number of negotiable bonds may be cancelled, and suits upon it restrained, because of facts not appearing on its face. *Louisville, New Albany & Chicago Railway Co.* v. *Louisville Trust Co.*, 552.

See ACTION AT LAW.

ESTOPPEL.

See NATIONAL BANK, 3;
TAX AND TAXATION, 5.

EXTRADITION.

The appellant, a Canadian, was extradited from Canada under the extradition treaty between Great Britain and the United States, and, being brought before a police court of Detroit was charged with larceny, gave bail for his appearance at the trial, and returned to Canada. Returning from Canada to Detroit voluntarily before the time fixed for trial, he was arrested on a capias issued from the District Court of the United States for the Eastern District of Michigan before his extradition, charging him with an offence for which he was not extraditable, and was taken into custody by the marshal of that district. He applied to the District Court of the United States for a writ of *habeas corpus*, which was allowed. After hearing and argument his application for a discharge was refused by the District Court. On appeal to this court it is *Held*, That under the circumstances the appellant retained the right to have the offence for which he was extradited disposed of, and then to depart in peace, and that this arrest was in abuse of the high process under which he was originally brought into the United States, and cannot be sustained. *Cosgrove* v. *Winney*, 64.

FRAUD.

See CONTRACT, 1;
RAILROAD.

GUARANTY.

Under a statute authorizing the board of directors of a railroad corporation, upon the petition of a majority of its stockholders, to direct the execution by the corporation of a guaranty of negotiable bonds of another corporation, a negotiable guaranty executed by order of the directors, and signed by the president and secretary and under the seal of the first corporation upon each of such bonds, without the authority or assent of the majority of its stockholders, is void as to a purchaser of such bonds with notice of the want of such authority or assent; but is valid as to a purchaser in good faith and without such notice. *Louisville, New Albany & Chicago Railway Co.* v. *Louisville Trust Co.*, 552.

INSOLVENCY.

See NATIONAL BANK, 6, 7.

INTERNAL REVENUE.

There was no proof in this case to overcome the denials in the original answer, and to show that the property seized by the Collector of Internal Revenue had been forfeited to the United States. *United States* v. *One Distillery*, 149.

INTERSTATE COMMERCE.

See TAX AND TAXATION, 1.

JURISDICTION.

GENERALLY.

Congress may provide for a review of the action of commissioners and boards created by it and exercising only *quasi* judicial powers, by a transfer of their proceedings and decisions to judicial tribunals for examination and determination *de novo*. *Stephens* v. *Cherokee Nation*, 445.

A. JURISDICTION OF THE SUPREME COURT.

1. From the statement of this case made by the Supreme Court of Louisiana in its opinion, quoted in the opinion of this court, it is manifest that no Federal question was passed upon by that court, but that its decision was put upon an independent ground, involving no Federal question, and of itself sufficient to support the judgment below; and this court therefore dismisses the writ of error. *White* v. *Leovy*, 91.
2. If the petition of a woman, claiming to be the widow of a man supposed to have died intestate, for the revocation of letters of administration previously granted to his next of kin, and for the grant of such letters to her, is dismissed by the surrogate's court upon the ground that a decree of divorce obtained by her in another State from a former husband is void; and she appeals from the judgment of dismissal to the highest court of the State, which affirms that judgment, and, pending a writ of error from this court, it is shown that a will of the deceased was proved in the surrogate's court after its judgment dismissing her petition, and before her appeal from that judgment; the writ of error must be dismissed. *Kimball* v. *Kimball*, 158.
3. O'Brien being arrested in the State of New York for larceny, Nelson induced Moloney to join him in becoming O'Brien's bondsman, and gave Moloney a mortgage on his (Nelson's) real estate in New York to the amount of $10,000, to indemnify him. O'Brien having defaulted in his appearance for trial, Moloney was sued upon the bond, and a judgment was recovered against him, which was wholly paid by him. Before paying it he brought suit against Nelson to recover the amount for which he was so liable, and obtained a judgment in his favor in

the trial court, which was reversed in the courts above on the ground that as, at that time he had paid nothing on the forfeiture, no recovery could be had. In appealing from the trial court in that case he entered into the usual stipulation that, if the judgment appealed from should be affirmed, judgment absolute might be rendered against him. He then brought this suit to foreclose the mortgage. Meanwhile Nelson had transferred the property mortgaged to one Adams. The defendant contended that the stipulation given by the plaintiff on the appeal to that court in the prior action was a bar to the recovery in this action; and that the bond and mortgage having been given to indemnify bail in a criminal case, they were void because contrary to public policy. But the Court of Appeals *Held:* (1) That the contention that the stipulation operated to prevent a recovery was without support in authority or reason; and (2) That it was not a part of the public policy of the State of New York to insist upon personal liability of sureties, and forbid bail to become indemnified. *Held:* (1) That these conclusions involved no Federal question; (2) That under the circumstances described in the opinion of the court, the proceedings in relation to the removal of the cause afforded no ground for the issue of the writ of error; (3) That, following *Missouri Pacific Railway* v. *Fitzgerald*, 160 U. S. 556, the state court having proceeded to final judgment in this case, its action is not reviewable on writ of error to such judgment. *Nelson* v. *Moloney*, 164.

4. It appearing on the face of the bill in this case that all the parties to this suit are citizens of Iowa, and the court being of opinion that the allegation in the bill that this is a controversy and a suit of a civil nature arising under the Constitution and laws of the United States is not only not supported by the facts appearing in the bill, but is so palpably unfounded that it constitutes not even a color for the jurisdiction of the circuit court, the decree below, dismissing the bill for want of jurisdiction, is affirmed. *McCain* v. *Des Moines*, 168.
5. On its face the decree of the Circuit Court of Appeals in this case is not a final judgment, and the appeal must therefore be dismissed. *United States* v. *Krall*, 385.
6. The statute conferring jurisdiction upon this court to consider and act upon the Indian cases was intended to operate retrospectively, and is not thereby rendered void. *Stephens* v. *Cherokee Nation*, 445.
7. The validity of remedial legislation of this kind cannot be questioned unless it is in violation of some provision of the Constitution. *Ib.*
8. The appeals to this court granted by the act extend only to the constitutionality or validity of the legislation affecting citizenship or the allotment of lands in the Indian Territory, and the limitation applies to both classes of cases mentioned in the opinion of the court, viz.: (1) citizenship cases; (2) cases between either of the Five Civilized Tribes and the United States. *Ib.*
9. The distribution of jurisdiction made by the act of March 3, 1891,

c. 517, is to be observed in these cases; but the whole case is not open to adjudication, but the appeal is restricted to the constitutionality and validity of the legislation. *Ib.*

10. This legislation is not in contravention of the Constitution; on the contrary, the court holds it all to be constitutional. *Ib.*
11. The judiciary act of March 3, 1891, c. 517, 26 Stat. 826, does not contemplate several separate appeals or writs of error, on the merits, in the same case and at the same time to two appellate courts, and therefore the writ in this case in this court, which was taken while the case was pending in the Circuit Court of Appeals, is dismissed. *Columbus Construction Co.* v. *Crane Co.*, 601.

See TRIAL BY JURY.

B. JURISDICTION OF CIRCUIT COURTS OF APPEALS.

The provision of the act of 1891, c. 517, § 3, that no judge before whom "a cause or question may have been heard or tried" in a District or Circuit Court shall sit "on the trial or hearing of such cause or question" in the Circuit Court of Appeals, disqualifies a judge, who has once heard a cause upon its merits in the Circuit Court, from sitting in the Circuit Court of Appeals on the hearing and decision of any question, in the same cause, which involves in any degree matter on which he had occasion to pass in the Circuit Court. *Moran* v. *Dillingham*, 153.

C. JURISDICTION OF CIRCUIT COURTS.

The Circuit Court of the United States for the District of Kentucky has jurisdiction of a suit brought by a corporation, originally created by the State of Indiana, against citizens of Kentucky and of Illinois, even if the plaintiff was afterwards and before the suit made a corporation of Kentucky also, and pending the suit became a corporation of both Indiana and Illinois by reason of consolidation with a corporation of Illinois; but the court cannot, in such a suit, adjudicate upon the rights and liabilities, if any, of the plaintiff as a corporation of Kentucky, or as a corporation of Illinois. *Louisville, New Albany & Chicago Railway Co.* v. *Louisville Trust Co.*, 552.

D. JURISDICTION OF THE COURT OF CLAIMS.

1. Under the act of March 3, 1891, c. 538, giving the Court of Claims jurisdiction over claims for property of citizens of the United States taken or destroyed by Indians no jurisdiction is given to the court over a claim for merely consequential damages resulting to the owner of property so taken by reason of the taking but not directly caused by the Indians. *Price* v. *United States and Osage Indians*, 373.
2. Under the act of July 28, 1892, c. 313, conferring jurisdiction on the Court of Claims "to hear and determine what are the just rights in

law" of the daughter and heir of Hugh Worthington to compensation for his interest in a steamboat taken and converted into a gunboat by the United States during the War of the Rebellion, and, if it "shall find that said claim is just," to render judgment in her favor for the sum found due, the issue to be determined depends upon the question what had been his legal right to such compensation, embracing all questions, of law or of fact, affecting the merits of the claim. *Oakes* v. *United States*, 778.

JURY.

In this case a jury was empanelled, trial had, and the case submitted on the 30th of November, 1896, with the following written instructions: "When the jury agree upon a verdict, write it out, all of the jurors sign it, date it, seal it up and deliver to the foreman, to be delivered in open court on the 1st day of December, 1896, and in the presence of all who sign it." On the 1st of December the jury returned the following verdict in writing signed by all. The official record of the proceedings is as follows: "Come here again the parties aforesaid in manner aforesaid, and the same jury return into court, except John T. Wright, who does not appear, and having said sealed verdict in his possession as foreman sends the same to the court by Dr. McWilliams, who delivers the same to the court with the statement that the said John T. Wright is ill and confined to his bed and physically unable to appear in court; that he, said McWilliams, is his attending physician, and as such received from said Wright said sealed verdict with direction to deliver it to the court; whereupon the defendant, by its counsel, objected to the reception, opening and reading of said sealed verdict; whereupon, in answer to the questions of the court, the remaining jurors severally on their oath say that they severally signed said verdict, and that they saw said John T. Wright sign the same, and that the name 'John T. Wright,' signed thereto, is in his handwriting; thereupon the remaining jurors on their oath say they find said issue in favor of the plaintiff and assess her damages by reason of the premises at seven thousand dollars ($7000)." The counsel for the defendant ask that the jury be polled, which is done, and each of said remaining jurors on his oath says that he finds said issue in favor of the plaintiff and assesses her damages by reason of the premises at $7000.00. Judgment was entered on this verdict against the District. It was contended by the District, which contention was sustained by the Court of Appeals, that this judgment was a nullity. *Held*, That the defect complained of was merely a matter of error, which did not render the verdict a nullity. *Humphries* v. *District of Columbia*, 190.

See TRIAL BY JURY.

LIMITATION, STATUTES OF.

See EJECTMENT, 2.

MEXICAN GRANT.

A petition for the rehearing of this case, which was decided May 23, 1898, and is reported 170 U. S. 681, is denied, on the ground that, after a careful reëxamination of the record, the court adheres to the judgment heretofore rendered, remaining of the opinion that from and after the adoption of the Mexican constitution of 1836, no power existed in the separate States to make such a grant as the one in this case. *United States* v. *Coe*, 578.

MUNICIPAL BONDS.

Mitchell County v. *Bank of Paducah*, 91 Texas, 361, which was an action upon interest coupons on bonds issued by the county for the purpose of building a court house and jail, and for constructing and purchasing bridges, in which it was held that as the constitution and laws of Texas authorizing the creation of a debt for such purposes require that provision should be made for the interest and for a sinking fund for the redemption of the debt, it was the duty of the court, in an action brought by a *bona fide* holder of bonds issued under the law to so construe it as to make them valid and give effect to them, is followed by this court, even if it should be found to differ from previous decisions of the Supreme Court of Texas, in force when the decision of the court below in this case was made. *Wade* v. *Travis County*, 499.

NATIONAL BANK.

1. In June, 1892, the United States National Bank of New York, by letter, solicited the business of the First National Bank of Little Rock, Arkansas. The latter, through its president, accepted the proposition, and opened business, by enclosing for discount, notes to a large amount. This business continued for some months, the discounted notes being taken up as maturing, until the Arkansas bank suspended payment, and went into the hands of a receiver. At that time the New York bank held notes to a large amount, which it had acquired by discounting them from the Arkansas bank. These notes have been duly protested for non-payment, and the payment of the fees of protest, made by the New York bank, have been charged to the Arkansas bank in account. The receiver refused to pay or allow them. At the time of the failure of the Arkansas bank there was a slight balance due it from the New York bank, which the latter credited to it on account of the sum which was claimed to be due on the notes after the refusal of the receiver to allow them. The New York bank commenced this suit against the receiver, to recover the balance which it claimed was due to it. The receiver denied all liability and asked judgment in his favor for the small balance in the hands of the New York bank. It was also set up that the notes dis-

counted by the New York bank were not for the benefit of the Arkansas bank, but for the benefit of its president, and that the New York bank was charged with notice of this. The judgment of the trial court, which was affirmed by the Circuit Court of Appeals, was for the full amount of the notes, less the set-off. In this court motion was made to dismiss the writ of error on the ground that jurisdiction below depended on diversity of citizenship, and hence was final. *Held:* (1) That the receiver, being an officer of the United States, the action against him was one arising under the laws of the United States, and this court had jurisdiction; (2) That it was competent for the directors of the Arkansas bank to empower the president, or cashier, or both to endorse the paper of the bank, and that, under the circumstances, the New York bank was justified in assuming that the dealings with it were authorized, and were executed as authorized; (3) That the set-off having been allowed by the New York bank in account, the receiver was entitled to no other relief. *Auten* v. *U. S. National Bank of New York*, 125.

2. The investment by the First National Bank of Concord, New Hampshire, of a part of its surplus funds in the stock of the Indianapolis National Bank of Indianapolis, Indiana, was an act which it had no power or authority in law to do, and which is plainly against the meaning and policy of the statutes of the United States and cannot be countenanced; and the Concord corporation is not liable to the receiver of the Indianapolis corporation for an assessment upon the stock so purchased made under an order of the Comptroller of the Currency to enforce the individual liability of all stockholders to the extent of the assessment. *Concord First National Bank* v. *Hawkins*, 364.
3. The doctrine of estoppel does not apply to this case. *Ib.*
4. The receiver of a national bank cannot recover a dividend paid to a stockholder not at all out of profits, but entirely out of capital, when the stockholder receiving such dividend acted in good faith, believing the same to be paid out of profits, and when the bank, at the time such dividend was declared and paid, was not insolvent. *McDonald* v. *Williams*, 397.
5. The decision of the court below that taxes imposed upon the franchise or intangible property of a national bank may be regarded as the equivalent of a tax on the shares of stock in the names of the shareholders, and hence did not violate the act of Congress in that respect, was erroneous and is reversed. *First National Bank of Louisville* v. *Louisville*, 438.
6. The several payments and remittances made to the Chemical Bank by the Capital Bank before its insolvency were not made in contemplation of insolvency, or with a view to prefer the Chemical Bank. *McDonald* v. *Chemical National Bank*, 610.
7. These checks and remittances were not casual, but were plainly made

under a general agreement that remittances were to be made by mail, and that their proceeds were not to be returned to the Capital Bank, but were to be credited to its constantly overdrawn account; and when letters containing them were deposited in the postoffice, such mailing was a delivery to the Chemical Bank, whose property therein was not destroyed or impaired by the insolvency of the Capital Bank, taking place after the mailing and before the delivery of the letters containing the remittances. *Ib.*

PATENT FOR INVENTION.

1. Every element of the combination described in the first and second claims of letters patent No. 450,124, issued April 7, 1891, to Horace J. Hoffman for improvements in storage cases for books, is found in previous devices, and, limiting the patent to the precise construction shown, none of the defendant's devices can be treated as infringements. *Office Specialty Manufacturing Co.* v. *Fenton Metallic Manufacturing Co.*, 492.

POTOMAC FLATS.

See WASHINGTON CITY.

PRACTICE.

For the reasons stated in the opinion of the court, it is precluded from looking at the so-called statements of facts, and when they are excluded from the record there is nothing left for review, and the judgment below is affirmed. *Cohn* v. *Daly*, 539.

PUBLIC LAND.

1. The right of Flett, under whom De Lacey claims, was a right of preemption only, which ceased at the expiration of thirty months from the filing of his statement, by reason of the failure to make proof and payment within the time required by law, and it is not necessary, in order that the law shall have its full operation, that an acknowledgment of the fact should be made by an officer in the land office, in order to permit the law of Congress to have its legal effect; and when the defendant settled upon the land in April, 1886, and applied to make a homestead entry thereon, his application was rightfully rejected. *Northern Pacific Railway Co.* v. *De Lacey*, 622.
2. The record shows that at the time of the commencement of this action the railway company was the owner and entitled to the immediate possession of the land in controversy, and that it was entitled therefore to judgment in its favor. *Ib.*

RAILROAD.

The New Albany Railway Company, whose road was in several States, guaranteed bonds of a Kentucky Railway Company to a large amount. It attempted by suit to avoid this guaranty as *ultra vires*. Its contention was sustained by the Circuit Court, but its decree was reversed by the Circuit Court of Appeals, and this court has sustained that decision. After the decision of the Circuit Court of Appeals, Mills, a creditor of the company, commenced suit in the Circuit Court of the United States. The company appeared and confessed judgment, and execution was issued and returned unsatisfied. Thereupon the creditor filed a bill praying for the appointment of a receiver for the entire road, and that the court would administer the trust fund, and order the road sold, and the proceeds from the sale divided among the different creditors according to their priority. The New Albany Company admitted the allegations of the bill, and interposed no objections, whereupon a receiver was appointed. These proceedings took place on the same day. Subsequently proceedings were commenced at different times for the foreclosure of different mortgages, all of which suits were consolidated. Then the Trust Company, as holder of some of the guaranteed bonds, intervened. Then a decree of foreclosure was entered, and a sale ordered, made and confirmed. Then the Trust Company filed another intervening petition, charging that Mills' proceedings had been procured by the New Albany Company for the purpose of hindering and delaying the general or unsecured creditors in the enforcement of their debts, and praying that the decree of foreclosure might be set aside, and other prayers. This was denied, and a sale was ordered. An appeal by the Trust Company to the Circuit Court of Appeals resulted in the affirmation of the decree below. The proceedings being brought here on certiorari, it is *Held*, that, under the circumstances as presented by this record, there was error; that the charge of collusion was one compelling investigation, and that the case must be remanded to the Circuit Court with instructions to set aside the confirmation of sale; to inquire whether it is true, as alleged, that the foreclosure proceedings were made in pursuance of an agreement between the bondholder and stockholder to preserve the rights of both, and destroy the interests of unsecured creditors; and that, if it shall appear that such was the agreement between these parties, then to refuse to permit the confirmation of sale until the interests of unsecured creditors have been preserved. *Louisville Trust Co.* v. *Louisville, New Albany & Chicago Railway Co.*, 674.

See CONSTITUTIONAL LAW, A, 1, 2;
GUARANTY;
TAX AND TAXATION, 1, 9, 10.

RECEIVER.

1. A claim was presented against the estate of the Peoria and St. Louis Railway Company in the hands of a receiver, which the receiver disputed. After reference to a master, and his report, stating the facts, an order was entered directing the receiver to pay the claim. He appealed from this decision to the Court of Appeals. The record on appeal contained the order of reference, the findings of fact, the report of the master, and the exceptions of the receiver. The Court of Appeals directed the appeal to be dismissed. *Held*, That the proper entry should have been an affirmance of the decree rather than a dismissal. *Bosworth* v. *St. Louis Terminal Railroad Association*, 182.
2. A receiver may defend, both in the court appointing him and by appeal, the estate in his possession against all claims which are antagonistic to the rights of both parties to the suit. *Ib.*
3. He may likewise defend the estate against all claims which are antagonistic to the rights of both parties to the suit, subject to the limitation that he may not in such defence question any order or decree of the court distributing burdens or apportioning rights between the parties to the suit, or any order or decree resting upon the discretion of the court appointing him. *Ib.*
4. He cannot question any subsequent order or decree of the court distributing the estate in his hands between the parties to the suit. *Ib.*
5. He may appeal from an order or decree which affects his personal rights, provided it is not an order resting in the discretion of the court. *Ib.*
6. His right to appeal from an allowance of a claim against the estate does not necessarily fail when the receivership is terminated to the extent of surrendering the property in the possession of the receiver. *Ib.*

See NATIONAL BANK, 1.

RIPARIAN OWNER.

1. The river, Rio Grande, within the limits of New Mexico, is not a stream over which, in its ordinary condition, trade and travel can be conducted in the customary modes of trade and travel on water. *United States* v. *Rio Grande Dam and Irrigation Co.*, 690.
2. The unquestioned rule of the common law was that every riparian owner was entitled to the continued natural flow of the stream; but every State has the power, within its dominion, to change this rule, and permit the appropriation of the flowing waters for such purposes as it deems wise: whether a territory has this right is not decided. *Ib.*
3. By acts of Congress referred to in the opinion, Congress recognized and assented to the appropriation of water in contravention of the common law rules; but it is not to be inferred that Congress thereby meant to confer on any State the right to appropriate all the waters of the tributary streams which unite into a navigable watercourse, and

so destroy the navigability of that watercourse in derogation of the interests of all the people of the United States. *Ib.*

4. The act of September 19, 1890, c. 907, on this subject, must be held controlling, at least as to any rights attempted to be created since its passage. *Ib.*

STATUTE.

A. Construction of Statutes.

On questions of exemption from taxation or limitations on the taxing power, asserted to arise from statutory contracts, doubts arising must be resolved against the claim of exemption. *Louisville* v. *Bank of Louisville*, 439.

B. Statutes of the United States.

See Captures during the War of the Rebellion, 2, 3, 5; Copyright; Court and Jury, 2; Criminal Law, 1; Customs Duties; Jurisdiction, A, 11; B; D, 1, 2; Riparian Owners, 3, 4; Tax and Taxation, 8; Telephone Companies; Trial by Jury, 1, 9; Washington City.

C. Statutes of States and Territories.

California. *See* Water Rates, 1.
Kansas. *See* Constitutional Law, A, 1.
Maryland. *See* Washington City.
Missouri. *See* Constitutional Law, A, 2.
Virginia. *See* Washington City.

TAX AND TAXATION.

1. It having been settled, by previous decisions of this court, that where a corporation of one State brings into another State, to use and employ, a portion of its movable property, it is legitimate for the latter State to impose upon such property thus used and employed, its fair share of the burdens of taxation imposed upon similar property, used in like way by its own citizens, it is now held that such a tax may be properly assessed and collected when the specific and individual items of property so used (railway cars) were not continuously the same, but were constantly changing according to the exigencies of the business, and that the tax may be fixed by an appraisement and valuation of the average amount of the property thus habitually used and employed; and that the fact that such cars were employed as vehicles of transportation in the interchange of interstate commerce would not render their taxation invalid. *American Refrigerator Transit Company* v. *Hall*, 70.

2. *Citizens' Savings Bank* v. *Owensboro*, 173 U. S. 636, followed to the point that in the case of a bank whose charter was granted subsequently to the year 1856, and which had accepted the provisions of the Hewitt Act, and had thereafter paid the tax specified therein, there was no irrepealable contract in favor of such bank that it should be thereafter and during its corporate existence taxed under the provisions of that act. *Stone* v. *Bank of Commerce*, 412.

3. The agreement set forth in the statement of facts between the city of Louisville, the sinking fund commissioners of that city, represented by the city attorney, and the various banks of that city acting by their attorneys, was not a valid agreement, within the power of an attorney at law to make. *Ib.*

4. An attorney, in his capacity merely as such, has no power to make any agreement for his client before a suit has been commenced, or before he has been retained to commence one; and if, under such circumstances, he assumes to act for his principal, it must be as agent, and his actual authority must appear. *Ib.*

5. An equitable estoppel which would prevent the State from exercising its power to alter the rate of taxation in this case should be based upon the clearest equity; and the payment of the money under the circumstances of this case, not exceeding the amount really legally due for taxes, although disputed at the time, does not work such an equitable estoppel as to prevent the assertion of the otherwise legal rights of the city. *Ib.*

6. The assertion in this case of an irrevocable contract with the State touching the taxation of the plaintiff, arising from the Hewitt Act, is disposed of by the opinion of this court in *Citizens' Savings Bank of Owensboro* v. *Owensboro*, 173 U. S. 636. *Third National Bank of Louisville* v. *Stone*, 432.

7. The taxes which it was sought to enjoin in this suit were imposed upon the franchises and property of the bank, and not upon the shares of stock in the names of the shareholders, and were therefore illegal because in violation of the act of Congress. *Ib.*

8. *Third National Bank of Louisville* v. *Stone, Auditor, ante*, 432, followed in holding that taxes like those here in question are illegal, because levied upon the property and franchise of the bank, and not upon the shares of stock in the names of the shareholders. *Louisville* v. *Third National Bank*, 435.

9. The provision in the act of July 27, 1866, c. 278, exempting from taxation the right of way granted to the Atlantic and Pacific Railroad Company, does not operate to exempt the right of way when acquired from private owners and not from the United States; and the judgment in this case made at this term and reported on page 186 of 172 U. S., having been made under a mistake of facts, is modified to that extent. *New Mexico* v. *United States Trust Company*, 545.

10. The assessments on the superstructures, on so much of the right of

way as was taxable, were not assessments of personal property, but were clearly assessments of real estate; and the fact that the improvements were designated by name, and some of them given a separate valuation, did not invalidate their assessment as real estate. *Ib.*

See NATIONAL BANK, 5;
STATUTE, A.

TELEPHONE COMPANIES.

The provisions in the act of July 24, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," and Rev. Stat. §§ 5263 to 5268, in which those provisions are preserved, have no application to telephone companies, whose business is that of electrically transmitting articulate speech between different points. *Richmond* v. *Southern Bell Telephone & Telegraph Company*, 761.

TRIAL BY JURY.

1. This court has jurisdiction to review by writ of error, under the act of February 9, 1893, c. 74, § 8, a judgment of the Court of Appeals of the District of Columbia, maintaining the validity of proceedings for a trial by a jury before a justice of peace, which were sought to be set aside on the ground that the act of Congress authorizing such a trial was unconstitutional. *Capital Traction Company* v. *Holt*, 1.
2. The provisions of the Constitution of the United States securing the right of trial by jury, whether in civil or in criminal cases, are applicable to the District of Columbia. *Ib.*
3. By the Seventh Amendment to the Constitution, either party to an action at law (as distinguished from suits in equity and in admiralty) in a court of the United States, where the value in controversy exceeds twenty dollars, has the right to a trial by jury. *Ib.*
4. By the Seventh Amendment to the Constitution, when a trial by jury has been had in an action at law, in a court either of the United States or of a State, the facts there tried and decided cannot be reëxamined in any court of the United States otherwise than according to the rules of the common law of England, that is to say, upon a new trial, either granted by the court in which the first trial was had or to which the record was returnable, or ordered by an appellate court for error in law. *Ib.*
5. "Trial by jury," in the primary and usual sense of the term at the common law and in the American constitutions, is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them upon the law and to advise them upon the facts, and (except upon acquittal of a criminal charge) to set

aside their verdict if in his opinion it is against the law or the evidence. *Ib.*

6. A trial of a civil action, before a justice of the peace of the District of Columbia, by a jury of twelve men, as permitted by the acts of Congress, without requiring him to superintend the course of the trial or to instruct the jury in matter of law, or authorizing him to arrest judgment upon their verdict, or to set it aside for any cause whatever, is not a trial by jury, in the sense of the common law and of the Constitution, and does not prevent facts so tried from being tried anew by a common law jury in an appellate court. *Ib.*
7. Congress, in the exercise of its general and exclusive power of legislation over the District of Columbia, may provide for the trial of civil causes of moderate amount before a justice of the peace, or, in his presence, by a jury of twelve, or of any less number, allowing to either party, where the value in controversy exceeds twenty dollars, the right to appeal from the judgment of the justice of the peace to a court of record, and to have a trial by jury in that court. *Ib.*
8. The appeal authorized by Congress from judgments of a justice of the peace in the District of Columbia to a court of record, "in all cases where the debt or damage doth exceed the sum of five dollars," includes cases of judgments entered upon the verdict of a jury. *Ib.*
9. The right of trial by jury, secured by the Seventh Amendment to the Constitution, is not infringed by the act of Congress of February 19, 1895, c. 100, enlarging the jurisdiction of a justice of the peace in the District of Columbia to three hundred dollars, and requiring every appellant from his judgment to enter into an undertaking, with surety, to pay and satisfy the final judgment of the appellate court. *Ib.*

VERDICT.

See JURY.

WASHINGTON CITY.

1. The grant by Charles I. to Lord Baltimore on the 20th of June, 1632, included in unmistakable terms the Potomac River, and the premises in question in this suit; and declared that thereafter the province of Maryland, its freeholders and inhabitants, should not be held or reputed a member or part of the land of Virginia; and the territory and title thus granted were never divested, and upon the Revolution the State of Maryland became possessed of the navigable waters of the State, including the Potomac River, and of the soils thereunder, and, by the act of cession to the United States, that portion of the Potomac River with the subjacent soil, which was appurtenant to and part of the territory granted, became vested in the United States; and the court, in consequence, affirms the judgment of the court below in

respect of the Marshall heirs, denying their claims. *Morris* v. *United States*, 196.

2. It was not the intention of Congress by the resolution of February 16, 1839, to subject lands lying beneath the waters of the Potomac, and within the limits of the District of Columbia, to sale by the methods therein provided; and the decisions of the courts of Maryland to the contrary, made since the cession to the United States, and at variance with those which prevailed at the time of the cession, cannot control the decision of this court on this question; but as the invalidity of the patent in the present case was not apparent on its face, but was proved by extrinsic evidence, and as the controversy respecting the patent was not abandoned by the defendants, they are not entitled to a decree for the return of the purchase money or for costs. *Ib.*
3. It was the intention of the founders of the city of Washington to locate it upon the bank or shore of the Potomac River, and to bound it by a street or levee, so as to secure to the inhabitants and those engaged in commerce free access to the navigable water, and such intention has never been departed from. *Ib.*
4. As to land above high-water mark in Washington, the title of the United States must be found in the transactions between the private proprietors and the United States. *Ib.*
5. The proprietors of such land, by their conveyances, completely divested themselves of all title to the tracts conveyed, and the lands were granted to the trustees. *Ib.*
6. The Dermott map was the one intended by President Washington to be annexed to the act of March 2, 1797; but the several maps are to be taken together as representing the intentions of the founders of the city; and, so far as possible, are to be reconciled as parts of one scheme or plan. *Ib.*
7. From the first conception of the Federal City, the establishment of a public street, bounding the city on the south, and to be known as Water Street, was intended, and such intention has never been departed from; and it follows that the holders of lots and squares, abutting on the line of Water Street, are not entitled to riparian rights, nor are they entitled to rights of private property in the waters or the reclaimed lands lying between Water Street and the navigable channels of the river, unless they can show valid grants of the same from Congress, or from the city on the authority of Congress, or such a long protracted and notorious possession and enjoyment of defined parcels of land, as to justify a court, under the doctrine of prescription, in inferring grants. *Ib.*
8. The Chesapeake and Ohio Canal Company, having entered Washington long after the adoption of the maps and plans, cannot validly claim riparian rights as appurtenant to the lots or parts of lots which it purchased in Water Street; as it was the persistent purpose of the founders of the city to maintain a public street along the river front;

and Congress and the city only intended to permit that company to construct and maintain its canal within the limits of the city, and to approve its selection of the route and terminus. *Ib.*

9. No riparian rights belonged to the lots between Seventh Street west and Twenty-seventh Street west. *Ib.*
10. There is no merit in the claim of the descendants of Robert Peter. *Ib.*
11. It is impossible to reconcile the succession of acts of Congress and of the city council with the theory that the wharves of South Water Street were erected by individuals in the exercise of private rights of property. *Ib.*
12. The failure of the city to open Water Street created no title in Willis to the land and water south of the territory appropriated for that street. *Ib.*
13. The court does not understand that it is the intention of Congress, in exercising its jurisdiction over this territory, to take for public use, without compensation, the private property of individuals, and therefore, while affirming the decree of the court below as to the claims of the Marshall heirs, and as to the Kidwell patent and as to the claims for riparian rights, it remands the case to the court below for further proceedings. *Ib.*

WATER RATES.

1. Under the provisions of the act of the legislature of California of March 7, 1881, c. 52, making it the official duty of the board of supervisors, town council, board of aldermen or other legislative body of any city and county, city or town, in the State, to annually fix the rates that shall be charged and collected for water furnished, one who furnishes water is not entitled to formal notice as to the precise day upon which the water rates will be fixed, as provision for hearing is made by statute in an appropriate way. *San Diego Land & Town Company* v. *National City*, 739.
2. There is no ground in the facts in this case for saying that the appellant did not have or was denied an opportunity to be heard upon the question of rates. *Ib.*
3. It was competent for the State of California to declare that the use of all water appropriated for sale, rental, or distribution, should be a public use, subject to public regulation and control; but this power could not be exercised arbitrarily and without reference to what was just and reasonable between the public and those who appropriated water, and supplied it for general use. *Ib.*
4. The judiciary ought not to interfere with the collection of such rates, established under legislative sanction, unless they are so plainly and palpably unreasonable, as to make their enforcement equivalent to the taking of property for public use without such compensation as, under the circumstances, is just both to the owner and the public. *Ib.*

5. In this case it is not necessary to decide whether the city ordinance should have expressly allowed the appellant to charge for what is called a water right. *Ib.*

6. On careful scrutiny of the testimony, this court is of opinion that no case is made which will authorize a decree declaring that the rates fixed by the defendant's ordinance are such as amount to a taking of property without just compensation; and that the case is not one for judicial interference with the action of the local authorities. *Ib.*